

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Ohio Coal Association, Kentucky Coal	:	
Association, National Mining Association,	:	
National Stone, Sand, and Gravel	:	
Association, and Portland Cement	:	
Association,	:	Case No. 2:14-cv-2646
	:	
Plaintiffs,	:	Judge Graham
	:	
v.	:	Magistrate Judge Deavers
	:	
Thomas E. Perez, Secretary of Labor, and	:	
Mine Safety and Health Administration,	:	
	:	
Defendants.	:	
	:	

**PLAINTIFFS' MOTION FOR LEAVE TO FILE
RESPONSE TO DEFENDANTS' NOTICE INSTANTER**

Plaintiffs request leave to file the attached Response to Plaintiffs' Notice [of Supplemental Authority] Instanter (see Exhibit A). Defendants' filed their Notice on October 1, 2015 (Doc. No. 38), citing a recent recently issued decision by the Federal Mine Safety and Review Commission in *Sec'y of Labor v. Brody Mining, LLC*, FMSHRC Docket No. WEVA 2014-82-R, et al. (Sept. 29, 2015) ("Brody II"). Defendants incorrectly state that the Commission held that "the Secretary's definition of the term 'pattern of violations' was reasonable and entitled to deference." (See Doc. No. 38, PAGEID # 422). Plaintiffs offer the attached response demonstrating that the Commission did not necessarily adopt the Secretary's definition, but instead created its own vague definition of "pattern of violations." Plaintiffs further offer the attached response to explain the impact (or lack thereof) of the *Brody II* Commission decision on the present case.

WHEREFORE, Plaintiffs move the Court for an order granting leave to file a Response to Plaintiffs' Notice [of Supplemental Authority] and requests that the Court accept their response, attached hereto as Exhibit A.

Respectfully submitted,

/s/ Scott A. Carroll

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Certificate of Service

A true and accurate copy of the foregoing was electronically filed on October 14, 2015 via the Court's ECF filing system, which automatically serves notice on counsel of record.

/s/ Scott A. Carroll

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